

Senate Bill No. 73

Passed the Senate June 28, 2011

Secretary of the Senate

Passed the Assembly June 28, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Sections 4792, 12301.07, and 14105.09 to the Welfare and Institutions Code, relating to health and human services, and making an appropriation therefor, to take effect immediately, bill related to the budget.

LEGISLATIVE COUNSEL'S DIGEST

SB 73, Committee on Budget and Fiscal Review. Health and human services.

(1) Existing law, the Lanterman Developmental Disabilities Services Act, authorizes the State Department of Developmental Services to contract with regional centers to provide services and supports to individuals with developmental disabilities.

This bill would, if a specified provision of the Budget Act of 2011 is operative, state the intent of the Legislature for the department to identify up to \$100 million in General Fund savings from the developmental services system, as prescribed. This bill would authorize the department to utilize input from prescribed workgroups. This bill would require, as prescribed, the department to report to the Joint Legislative Budget Committee within 10 days of the specified reduction as directed within the Budget Act of 2011.

(2) Existing law provides for the In-Home Supportive Services (IHSS) program, under which, either through employment by the recipient, or by or through contract by the county, qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Counties are responsible for the administration of the IHSS program. Under the Medi-Cal program, similar services are provided to eligible individuals, with these services known as personal care option services.

Existing law authorized an individual who was eligible for IHSS services in the 1992–93 fiscal year, and who had his or her services reduced pursuant to specified provisions, but who believed that he or she was at serious risk of out-of-home placement unless all or part of the reduced hours were restored, to apply for an IHSS Care Supplement, as prescribed.

Existing law established a similar reduction in authorized IHSS service hours, which becomes operative only if a specified medication machine pilot project does not achieve a designated amount of savings to the General Fund, as determined by the Department of Finance, and also authorizes an individual whose services have been reduced, and who believes that he or she is at serious risk of out-of-home placement, to submit an IHSS Care Supplement application, in accordance with specified provisions, in order to have all or part of the service hour reduction restored.

Existing law also requires the department to implement a 3.6% reduction in service hours to each IHSS recipient, until July 1, 2012.

This bill, effective January 1, 2012, would impose an additional 20% service hour reduction on IHSS recipients, which would be operative only if a designated provision of the Budget Act of 2011 becomes operative, and would establish an IHSS Care Supplement process for any individual who is notified of a reduction in service hours under the bill, but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored.

(3) Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions.

This bill would, effective on or after January 1, 2012, if a specified provision of the Budget Act of 2011 is operative, apply specified payment reductions to managed care health plans that contract with the department and to other specified contracts.

(4) This bill would appropriate \$1,000 to the State Department of Health Care Services for administration.

(5) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 4792 is added to the Welfare and Institutions Code, to read:

4792. (a) This section of law shall only be operative if subdivision (b) of Section 3.94 of the Budget Act of 2011 is operative. It is the intent of the Legislature for the department to identify up to one hundred million dollars (\$100,000,000) in General Fund savings from within the overall developmental services system, including any savings or reductions within state administrative support, operation of the developmental centers, and operation of the regional centers, including administration and the purchase of services where applicable if subdivision (b) of Section 3.94 of the Budget Act of 2011 is operative. A variety of strategies, including, but not limited to, savings attributable to caseload adjustments, changes in expenditure trends, unexpended contract funds, or other administrative savings or restructuring can be applied to this reduction with the intent of keeping reductions as far away as feasible from consumer's direct needs, services, and supports, including health, safety, and quality of life.

(b) The department may utilize input from workgroups comprised of consumers and family members, consumer-focused advocacy groups, service provider representatives, regional center representatives, developmental center representatives, other stakeholders, and staff of the Legislature, to develop General Fund savings proposals as necessary.

(c) If subdivision (b) of Section 3.94 of the Budget Act of 2011 is operative, and the department is directed to identify up to one hundred million dollars (\$100,000,000) in General Fund savings from within the developmental services system, any savings or reductions identified shall be reported to the Joint Legislative Budget Committee within 10 days of the reduction as directed within Section 3.94 of the Budget Act of 2011.

SEC. 2. Section 12301.07 is added to the Welfare and Institutions Code, to read:

12301.07. (a) (1) Notwithstanding any other provision of law, if Section 3.94 of the Budget Act of 2011 becomes operative, the department shall implement a 20-percent reduction in authorized hours of service to each in-home supportive services recipient as specified in this section, effective January 1, 2012, which shall be applied to the recipient's hours as authorized pursuant to his or her most recent assessment.

(2) The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled.

However, hours authorized pursuant to a reassessment shall be subject to the reduction required by this section.

(3) For those recipients who have a documented unmet need, excluding protective supervision, because of the limitations contained in Section 12303.4, this reduction shall be applied first to the unmet need before being applied to the authorized hours. If the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction, the recipient may apply for a restoration of the reduction of authorized service hours, pursuant to subdivision (f).

(4) A recipient of services under this article may direct the manner in which the reduction of hours is applied to the recipient's previously authorized services.

(5) The reduction in service hours made pursuant to paragraph (2) shall not apply to in-home supportive services recipients who also receive services under Section 9560, subdivision (t) of Section 14132, and Section 14132.99.

(b) The department shall work with the counties to develop a process to allow for counties to preapprove IHSS Care Supplements described in subdivision (f), to the extent that the process is permissible under federal law. The preapproval process shall be subject to the following conditions:

(1) The preapproval process shall rely on the criteria for assessing IHSS Supplemental Care applications, developed pursuant to subdivision (f).

(2) Preapproval shall be granted only to individuals who would otherwise be granted a full restoration of their hours pursuant to subdivision (f).

(3) With respect to existing recipients as of the effective date of this section, all efforts shall be made to ensure that counties complete the process on or before a specific date, as determined by the department, in consultation with counties in order to allow for the production, printing, and mailing of notices to be issued to remaining recipients who are not granted preapproval and who thereby are subject to the reduction pursuant to this section.

(4) The department shall work with counties to determine how to apply a preapproval process with respect to new applicants to the IHSS program who apply after the effective date of this section.

(c) The notice of action informing each recipient who is not preapproved for an IHSS Care Supplement pursuant to subdivision

(b) shall be mailed at least 15 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:

(1) The aggregate number of authorized hours before the reduction pursuant to paragraph (1) of subdivision (a) and the aggregate number of authorized hours after the reduction.

(2) That the recipient may direct the manner in which the reduction of authorized hours is applied to the recipient's previously authorized services.

(3) How all or part of the reduction may be restored, as set forth in subdivision (f), if the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction.

(d) The department shall inform providers of any reduction to recipient hours through a statement on provider timesheets, after consultation with counties.

(e) The IHSS Care Supplement application process described in subdivision (f) shall be completed before a request for a state hearing is submitted. If the IHSS Care Supplement application is filed within 15 days of the notice of action required by subdivision (c), or before the effective date of the reduction, the recipient shall be eligible for aid paid pending. A revised notice of action shall be issued by the county following evaluation of the IHSS Care Supplement application.

(f) Any aged, blind, or disabled individual who is eligible for services under this chapter who receives a notice of action indicating that his or her services will be reduced under subdivision (a) but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored may submit an IHSS Care Supplement application. When a recipient submits an IHSS Care Supplement application within 15 days of receiving the reduction notice or prior to the implementation of the reduction, the recipient's in-home supportive services shall continue at the

level authorized by the most recent assessment, prior to any reduction, until the county finds that the recipient does or does not require restoration of any hours through the IHSS Care Supplement. If the recipient disagrees with the county's determination concerning the need for the IHSS Care Supplement, the recipient may request a hearing on that determination.

(1) The department shall develop an assessment tool, in consultation with stakeholders, to be used by the counties to determine if a recipient is at serious risk of out-of-home placement as a consequence of the reduction of services pursuant to this section. The assessment tool shall be developed utilizing standard of care criteria for relevant out-of-home placements that serve individuals who are aged, blind, or who have disabilities and who would qualify for IHSS if living at home, including, but not limited to, criteria set forth in Chapter 7.0 of the Manual of Criteria for Medi-Cal Authorization published by the State Department of Health Care Services, as amended April 15, 2004, and the IHSS uniform assessment guidelines.

(2) Counties shall give a high priority to prompt screening of persons specified in this section to determine their need for an IHSS Care Supplement.

(g) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than March 1, 2013. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations implementing this section and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the

one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(h) If the Director of Health Care Services determines that federal approval is necessary to implement this section, this section shall be implemented only after any state plan amendments required pursuant to Section 14132.95 are approved.

SEC. 3. Section 14105.09 is added to the Welfare and Institutions Code, to read:

14105.09. Notwithstanding any other provision of law, if subdivision (b) of Section 3.94 of the Budget Act of 2011 is operative, effective on or after January 1, 2012, the payment reductions in Sections 14105.07, 14105.192, 14126.033, 14131.05, and 14131.07 shall apply to managed care health plans that contract with the department pursuant to Chapter 8.75 (commencing with Section 14590) and to contracts with the Senior Care Action Network and AIDS Healthcare Foundation, to the extent that the services are provided through any of these contracts, payments shall be reduced by the actuarial equivalent amount of the payment reductions pursuant to contract amendments or change orders effective on July 1, 2011, or thereafter.

SEC. 4. The sum of one thousand dollars (\$1,000) is hereby appropriated from the General Fund to the State Department of Health Care Services for administration.

SEC. 5. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

Approved _____, 2011

Governor